

## § 983.170

production; and for the current production year, the total receipts of open inshell, closed shell, shelling stock of each producing entity; and total pounds of processed pistachios produced by each producing entity.

(h) *Exemptions.* Handlers who handle less than 5,000 pounds of assessed weight pistachios during any production year are exempt from filing all forms, with the exception of the ACP-4.

(i) *Records.* Each handler shall maintain all records of pistachios received, held, shipped, and disposed of for at least 3 years following each crop year to show compliance with the marketing order provisions.

[70 FR 39907, July 12, 2005, as amended at 71 FR 51987, Sept. 1, 2006; 72 FR 69141, Dec. 7, 2007; 73 FR 18705, Apr. 7, 2008]

EFFECTIVE DATE NOTE: At 72 FR 69142, Dec. 7, 2007, in § 983.147, paragraph (d) was suspended, effective December 10, 2007.

### § 983.170 Handler exemption.

Pursuant to § 983.70, any handler may handle pistachios within the production area free of the requirements in §§ 983.38 through 983.45 and § 983.53 if such pistachios are handled in quantities of less than 5,000 pounds of assessed weight in any production year.

[71 FR 51987, Sept. 1, 2006]

## Subpart—Assessment Rate

### § 983.253 Assessment rate.

(a) On and after September 1, 2006, a continuing assessment rate of \$0.0007 per pound of assessed-weight pistachios is established for California pistachios. The assessment obligation of each handler shall be computed by applying the assessment rate to the assessed weight computed pursuant to § 983.6.

(b) For the 2004–05 fiscal period each handler who receives pistachios for processing shall furnish the Receipts/Assessment Report to the Committee and pay all due assessments to the Committee by March 15, 2005. For subsequent fiscal periods, each handler who receives pistachios for processing shall furnish the Receipts/Assessment Report and pay all due assessments to

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the Committee by December 15 of the applicable fiscal period.

[70 FR 9846, Mar. 1, 2005, as amended at 71 FR 66645, Nov. 16, 2006]

## PART 984—WALNUTS GROWN IN CALIFORNIA

### Subpart—Order Regulating Handling

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AUTHORITY: 7 U.S.C. 601-674.

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SOURCE: 27 FR 9094, Sept. 13, 1962, unless otherwise noted.

### DEFINITIONS

#### § 984.1 Secretary.

*Secretary* means the Secretary of Agriculture of the United States, or any other officer or employee of the United States Department of Agriculture who is, or who may be, authorized to perform the duties of the Secretary of Agriculture of the United States.

#### § 984.2 Act.

*Act* means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*).

#### § 984.3 Person.

*Person* means an individual, partnership, corporation, association, or any other business unit.

#### § 984.4 Area of production.

*Area of production* means the State of California.

[41 FR 31542, July 29, 1976]

#### § 984.5 Grower.

*Grower* is synonymous with *producer* and means any person engaged in a proprietary capacity in the commercial production of walnuts.

#### § 984.6 Board.

*Board* means the California Walnut Board established pursuant to § 934.35.

[73 FR 11336, Mar. 3, 2008]

#### § 984.7 Marketing year.

*Marketing year* means the twelve months from September 1 to the following August 31, both inclusive, or any other such period deemed appropriate and recommended by the Board for approval by the Secretary.

[73 FR 11337, Mar. 3, 2008]

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### § 984.8 Walnuts.

*Walnuts* means only walnuts of the “English” (*Juglans regia*) varieties grown in California.

[41 FR 31542, July 29, 1976]

### § 984.9 Inshell walnuts.

*Inshell walnuts* means walnuts the kernels of which are contained in the shell.

### § 984.10 Shelled walnuts.

*Shelled walnuts* means walnut kernels after the shells are removed.

### § 984.11 Merchantable walnuts.

(a) *Inshell. Merchantable inshell walnuts* means all inshell walnuts meeting the minimum grade and size regulations effective pursuant to § 984.50.

(b) *Shelled. Merchantable shelled walnuts* means all shelled walnuts meeting the minimum grade and size regulations effective pursuant to § 984.50.

[27 FR 9094, Sept. 13, 1962, as amended at 39 FR 35328, Oct. 1, 1974]

### § 984.12 Substandard walnuts.

*Substandard walnuts* means all walnuts (whether inshell or shelled) the kernels of which do not meet the minimum standard prescribed for merchantable shelled walnuts.

### § 984.13 To handle.

*To handle* means to pack, sell, consign, transport, or ship (except as a common or contract carrier of walnuts owned by another person), or in any other way to put walnuts, inshell or shelled, into the current of commerce either within the area of production or from such area to any point outside thereof, or for a manufacturer or retailer within the area of production to purchase directly from a grower: The term “to handle” shall not include sales and deliveries within the area of production by growers to handlers, or between handlers.

[73 FR 11337, Mar. 3, 2008]

### § 984.14 Handler.

*Handler* means any person who handles inshell or shelled walnuts.

[73 FR 11337, Mar. 3, 2008]

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### § 984.15 Pack.

*Pack* means to bleach, clean, grade, shell or otherwise prepare walnuts for market as inshell or shelled walnuts.

[73 FR 11337, Mar. 3, 2008]

### § 984.19 Manufacturer.

*Manufacturer* means any person who uses walnuts in the production of bakery goods, ice cream, candy, or other food products, except walnut oil.

### § 984.20 Kernelweight.

*Kernelweight* means the determined weight of the kernels in a quantity of walnuts regardless of their quality.

[39 FR 35328, Oct. 1, 1974]

### § 984.21 Handler inventory.

*Handler inventory as of any date* means all walnuts, inshell or shelled (except those held in satisfaction of a reserve obligation), wherever located, then held by a handler or for his or her account.

[73 FR 11337, Mar. 3, 2008]

### § 984.22 Trade demand.

(a) *Inshell.* The quantity of merchantable inshell walnuts that the trade will acquire from all handlers during a marketing year for distribution in the United States and its territories.

(b) *Shelled.* The quantity of merchantable shelled walnuts that the trade will acquire from all handlers during a marketing year for distribution in the United States and its territories.

[73 FR 11337, Mar. 3, 2008]

### § 984.23 Free walnuts.

*Free walnuts* means walnuts which are included in the free percentage established by the Secretary pursuant to § 984.49.

[39 FR 35328, Oct. 1, 1974]

### § 984.26 Reserve walnuts.

*Reserve walnuts* means those walnuts which are held to meet a reserve obligation.

[41 FR 31542, July 29, 1976]

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### § 984.31 Part and subpart.

*Part* means the order regulating the handling of walnuts grown in California, and all rules, regulations, and supplementary orders issued thereunder. This order regulating the handling of walnuts grown in California shall be a *subpart* of such part.

[41 FR 31542, July 29, 1976]

### § 984.32 To certify.

*To certify* means the issuance of a certification of inspection of walnuts by the inspection service.

[41 FR 31542, July 29, 1976]

### § 984.33 Hold.

*Hold* means to maintain possession or keep control of, in proper storage at all times, the kernelweight of certified merchantable walnuts necessary to meet a reserve obligation.

[41 FR 31542, July 29, 1976]

## ADMINISTRATIVE BODY

### § 984.35 California Walnut Board.

(a) A California Walnut Board is hereby established consisting of 10 members selected by the Secretary, each of whom shall have an alternate nominated and selected in the same way and with the same qualifications as the member. The members and their alternates shall be selected by the Secretary from nominees submitted by each of the following groups or from other eligible persons belonging to such groups:

(1) Two handler members from District 1;

(2) Two handler members from District 2;

(3) Two grower members from District 1;

(4) Two grower members from District 2;

(5) One grower member nominated at-large from the production area; and,

(6) One member and alternate who shall be selected after the selection of the nine handler and grower members and after the opportunity for such members to nominate the tenth member and alternate. The tenth member and his or her alternate shall be neither a walnut grower nor a handler.

(b) In the event that one handler handles 35% or more of the crop the membership of the Board shall be as follows:

(1) Two handler members to represent the handler that handles 35% or more of the crop;

(2) Two members to represent growers who market their walnuts through the handler that handles 35% or more of the crop;

(3) Two handler members to represent handlers that do not handle 35% or more of the crop;

(4) One member to represent growers from District 1 who market their walnuts through handlers that do not handle 35% or more of the crop;

(5) One member to represent growers from District 2 who market their walnuts through handlers that do not handle 35% or more of the crop;

(6) One member to represent growers who market their walnuts through handlers that do not handle 35% or more of the crop shall be nominated at large from the production area; and,

(7) One member and alternate who shall be selected after the selection of the nine handler and grower members and after the opportunity for such members to nominate the tenth member and alternate. The tenth member and his or her alternate shall be neither a walnut grower nor a handler.

(c) Grower Districts:

(1) *District 1.* District 1 encompasses the counties in the State of California that lie north of a line drawn on the south boundaries of San Mateo, Alameda, San Joaquin, Calaveras, and Alpine Counties.

(2) *District 2.* District 2 shall consist of all other walnut producing counties in the State of California south of the boundary line set forth in paragraph (c)(1) of this section.

(d) The Secretary, upon recommendation of the Board, may reestablish districts, may reapportion members among districts, and may revise the groups eligible for representation on the Board as specified in paragraphs (a) and (b) of this section: Provided, That any such recommendation shall require at least six concurring votes of the voting members of the Board. In recommending any such changes, the following shall be considered:

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(1) Shifts in acreage within districts and within the production area during recent years;

(2) The importance of new production in its relation to existing districts;

(3) The equitable relationship between Board apportionment and districts;

(4) Changes in industry structure and/or the percentage of crop represented by various industry entities resulting in the existence of two or more major handlers;

(5) Other relevant factors.

[73 FR 11337, Mar. 3, 2008]

### § 984.36 Term of office.

The term of office of Board members, and their alternates shall be for a period of two years ending on June 30 of odd-numbered years, but they shall serve until their respective successors are selected and have qualified.

[39 FR 35329, Oct. 1, 1974, as amended at 41 FR 31542, July 29, 1976]

### § 984.37 Nominations.

(a) Nominations for all grower members shall be submitted by ballot pursuant to an announcement by press releases of the Board to the news media in the walnut producing areas. Such releases shall provide pertinent voting information, including the names of candidates and the location where ballots may be obtained. Ballots shall be accompanied by full instructions as to their markings and mailing and shall include the names of incumbents who are willing to continue serving on the Board and such other candidates as may be proposed pursuant to methods established by the Board with the approval of the Secretary. Each grower, regardless of the number and location of his or her walnut orchard(s), shall be entitled to cast only one ballot in the nomination and each vote shall be given equal weight. If the grower has orchards in both grower districts, he or she shall advise the Board of the district in which he/she desires to vote. The person receiving the highest number of votes for each grower position shall be the nominee.

(b) Nominations for handler members shall be submitted on ballots mailed by the Board to all handlers in their re-

spective Districts. All handlers' votes shall be weighted by the kernelweight of walnuts certified as merchantable by each handler during the preceding marketing year. Each handler in the production area may vote for handler member nominees and their alternates. However, no handler with less than 35% of the crop shall have more than one member and one alternate member. The person receiving the highest number of votes for each handler member position shall be the nominee for that position.

(c) A calculation to determine whether or not a handler who handles 35 percent or more of the crop shall be made prior to nominations. For the first nominations held upon implementation of this language, the 35 percent threshold shall be calculated using an average of crop handled for the year in which nominations are made and one year's handling prior. For all future nominations, the 35 percent handling calculation shall be based in the average of the two years prior to the year in which nominations are made. In the event that one handler handles 35% or more of the crop the membership of the Board, nominations shall be as follows:

(1) Nominations of growers who market their walnuts to the handler that handles 35% or more of the crop shall be conducted by that handler and the names of the nominees shall be forwarded to the Board for approval and appointment by the Secretary.

(2) Nominations for the two handler members representing the major handler shall be conducted by the major handler and the names of the nominees shall be forwarded to the Board for approval and appointment by the Secretary.

(3) Nominations on behalf of all other grower members (Groups (b)(4), (5) and (6) of § 984.35) shall be submitted after ballot by such growers pursuant to an announcement by press releases of the Board to the news media in the walnut producing areas. Such releases shall provide pertinent voting information, including the names of candidates and the location where ballots may be obtained. Ballots shall be accompanied by full instructions as to their markings and mailing and shall include the names of incumbents who are willing

to continue serving on the Board and such other candidates as may be proposed pursuant to methods established by the Board with the approval of the Secretary. Each grower in Groups (Groups (b)(4), (5) and (6) of §984.35), regardless of the number and location of his or her walnut orchard(s), shall be entitled to cast only one ballot in the nomination and each vote shall be given equal weight. If the grower has orchard(s) in both grower districts he or she shall advise the Board of the district in which he or she desires to vote. The person receiving the highest number of votes for grower position shall be the nominee.

(4) Nominations for handler members representing handlers that do not handle 35% or more of the crop shall be submitted on ballots mailed by the Board to those handlers. The votes of these handlers shall be weighted by the kernelweight of walnuts certified as merchantable by each handler during the preceding marketing year. Each handler in the production area may vote for handler member nominees and their alternates of this subsection. However, no handler shall have more than one person on the Board either as member or alternate member. The person receiving the highest number of votes for a handler member position of this subsection shall be the nominee for that position.

(d) Each grower is entitled to participate in only one nomination process, regardless of the number of handler entities to whom he or she delivers walnuts. If a grower delivers walnuts to more than one handler entity, the grower must choose which nomination process he or she participates in.

(e) The nine members shall nominate one person as member and one person as alternate for the tenth member position. The tenth member and alternate shall be nominated by not less than 6 votes cast by the nine members of the Board.

(f) Nominations in the foregoing manner received by the Board shall be reported to the Secretary on or before June 15 of each odd-numbered year, together with a certified summary of the results of the nominations. If the Board fails to report nominations to the Secretary in the manner herein

specified by June 15 of each odd-numbered year, the Secretary may select the members without nomination. If nominations for the tenth member are not submitted by September 1 of any such year, the Secretary may select such member without nomination.

(g) The Board may recommend, subject to the approval of the Secretary, a change to these nomination procedures should the Board determine that a revision is necessary.

[73 FR 11337, Mar. 3, 2008]

#### § 984.38 Eligibility.

No person shall be selected or continue to serve as a member or alternate to represent one of the groups specified in §984.35(a)(1) through (6) or §984.38(b)(1) through (6), unless he or she is engaged in the business he or she is to represent, or represents, either in his or her own behalf or as an officer or employee if the business unit engaged in such business. Also, each member or alternate member representing growers in District 1 or District 2 shall be a grower, or officer or employee of the group he or she is to represent.

[73 FR 11338, Mar. 3, 2008]

#### § 984.39 Qualify by acceptance.

Any person nominated to serve as a member or alternate member of the Board shall, prior to selection by USDA, qualify by filing a written qualification and acceptance statement indicating such person's willingness to serve in the position for which nominated.

[73 FR 11338, Mar. 3, 2008]

#### § 984.40 Alternate.

(a) An alternate for a member of the Board shall act in the place and stead of such member in his or her absence or in the event of his or her death, removal, resignation, or disqualification, until a successor for his or her unexpired term has been selected and has qualified.

(b) In the event any member of the Board and his or her alternate are both unable to attend a meeting of the Board, any alternate for any other member representing the same group as the absent member may serve in the place of the absent member, or in the

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event such other alternate cannot attend, or there is no such other alternate, such member, or in the event of his disability or a vacancy, his or her alternate may designate, subject to the disapproval of the Secretary, a temporary substitute to attend such meeting. At such meeting such temporary substitute may act in the place of such member.

[73 FR 11338, Mar. 3, 2008]

### § 984.41 Vacancy.

Any vacancy occasioned by the removal, resignation, disqualification, or death of any member of alternate, or any need to select a successor through failure of any person selected as a member or alternate to qualify, shall be recognized by the Board causing a nomination to be made by the appropriate group and certifying to the Secretary a new nominee within 60 calendar days.

[39 FR 35330, Oct. 1, 1974, as amended at 41 FR 31543, July 29, 1976]

### § 984.42 Expenses.

The members and their alternates of the Board shall serve without compensation, but shall be allowed their necessary expenses incurred by them in the performance of their duties under this part.

[73 FR 11338, Mar. 3, 2008]

### § 984.43 Powers.

The Board shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

### § 984.44 Duties.

The duties of the Board shall be as follows:

(a) To act as intermediary between the Secretary and any handler or grower;

(b) To keep minute books and records which will clearly reflect all of its acts

and transactions, and such minute books and records shall at any time be subject to the examination of the Secretary;

(c) To furnish to the Secretary a complete report of all meetings and such other available information as he may request;

(d) To appoint such employees as it may deem necessary and to determine the salaries, define the duties, and fix the bonds of such employees;

(e) To cause the books of the Board to be audited by one or more competent public accountants at least once for each marketing year and at such other times as the Board deems necessary or as the Secretary may request, and to file with the Secretary three copies of all audit reports made;

(f) To investigate the growing, shipping and marketing conditions with respect to walnuts and to assemble data in connection therewith;

(g) To investigate compliance with the provisions of this part; and

(h) To recommend rules and regulations for the purpose of administering this subpart.

### § 984.45 Procedure.

(a) The members of the Board shall select a chairman from their membership, and shall select such other officers and adopt such rules for the conduct of Board business as they deem advisable. The Board shall give the Secretary the same notice of its meetings as is given to members of the Board.

(b) All decisions of the Board, except where otherwise specifically provided (see § 984.35(d)), shall be by a sixty-percent (60%) super-majority vote of the members present. A quorum of six members, or the equivalent of sixty percent (60%) of the Board, shall be required for the conduct of Board business.

(c) The Board may vote by mail or telegram, or by any other means of communication, upon due notice to all members. The Board, with the approval of the Secretary, shall prescribe the minimum number of votes that must be cast when voting is by any of these methods, and any other procedures necessary to carry out the objectives of this paragraph.

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(d) The Board may provide for meetings by telephone, or other means of communication and any vote cast at such a meeting shall be confirmed promptly in writing: Provided, That if any assembled meeting is held, all votes shall be cast in person.

[27 FR 9094, Sept. 13, 1962, as amended at 39 FR 35330, Oct. 1, 1974; 73 FR 11338, Mar. 3, 2008]

### § 984.46 Research and development.

The Board, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development projects, and marketing promotion, including paid advertising, designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of walnuts. The expenses of such projects shall be paid from funds collected pursuant to § 984.69 and § 984.70.

[73 FR 11339, Mar. 3, 2008]

### MARKETING POLICY

### § 984.48 Marketing estimates and recommendations.

(a) Each marketing year the Board shall hold a meeting, prior to October 20, for the purpose of recommending to the Secretary a marketing policy for such year. Each year such recommendation shall be adopted by the affirmative vote of at least 60% of the Board and shall include the following, and where applicable, on a kernelweight basis:

(1) Its estimate of the orchard-run production in the area of production for the marketing year;

(2) The Board's estimate of the handler inventory on September 1 of inshell and shelled walnuts;

(3) Its estimate of the merchantable and substandard walnuts in the production;

(4) The Board's estimate of the trade demand for such marketing year for shelled and inshell walnuts, taking into consideration trade inventory, imports, prices, competing nut supplies, and other factors;

(5) The Board's recommendation for desirable handler inventory of inshell and shelled walnuts on August 31 of each marketing year;

(6) Its recommendation as to the free and reserve percentages to be established for walnuts;

(7) Its recommendation of the percentage of reserve walnuts that may be exported pursuant to § 984.56, when it determines that the quantity of reserve walnuts that may be exported should be limited;

(8) Its opinion as to whether grower prices are likely to exceed parity; and

(9) Its recommendation for change, if any, in grade and size regulations.

(b) [Reserved]

[39 FR 35330, Oct. 1, 1974; 39 FR 35999, Oct. 7, 1974, as amended at 41 FR 31543, July 29, 1976; 73 FR 11339, Mar. 3, 2008]

### § 984.49 Volume regulation.

(a) *Free, reserve, and export percentages.* Whenever the Secretary finds, on the basis of the Board's recommendation or other information, that limiting the quantity of walnuts that may be handled in domestic markets for merchantable free walnuts during a marketing year will tend to effectuate the declared policy of the act, he shall establish a free percentage to prescribe the portion of such walnuts which may be handled as free walnuts, and a reserve percentage to prescribe the portion that must be withheld as reserve walnuts. Whenever the Board recommends an export percentage pursuant to § 984.48(a)(7), the Secretary shall establish a percentage if he finds it would tend to effectuate the declared policy of the act.

(b) *Revision of percentages.* (1) On or before February 15 of the marketing year, the Board may recommend that the free percentage be increased and the reserve percentage be decreased. On the basis of the Board's recommendation or other information the Secretary may establish such revisions. If the reserve percentage is reduced when an export percentage is in effect, an increase shall be made in the export percentage so that the quantity previously authorized for export will not be reduced. If the revised reserve quantity is less than the quantity previously authorized for export the export percentage shall be 100 percent. Upon revision, all reserve obligations that are theretofore accrued on merchantable walnuts certified during



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such year on the basis of the previously effective percentages shall be adjusted accordingly.

(2) Any time prior to July 1, the Board may recommend an increase in the export percentage, if it finds that there is an insufficient volume of reserve walnuts available for export and additional demand exists, which would not adversely affect the disposition of the oncoming crop. On the basis of the Board's recommendation or other information, the Secretary may establish such revision.

[41 FR 31543, July 29, 1976]

EFFECTIVE DATE NOTE: At 60 FR 40064, Aug. 7, 1995, in § 989.49, in paragraph (b)(1), the words "On or before February 15 of the marketing year," were suspended.

### QUALITY CONTROL

## § 984.50 Grade, quality and size regulations.

(a) *Minimum standard for inshell walnuts.* Except as provided in § 984.64, no handler shall handle inshell walnuts unless such walnuts are equal to or better than the requirements of U.S. No. 2 grade and baby size as defined in the then effective United States Standards for Walnuts (*Juglans regia*) in the Shell. This minimum standard may be modified by the Secretary on the basis of a Board recommendation or other information.

(b) *Minimum standard for shelled walnuts.* Except as provided in § 984.64, no handler shall handle shelled walnuts unless such walnuts are equal to or better than the requirements of the U.S. Commercial grade as defined in the then effective United States Standards for Shelled Walnuts (*Juglans regia*) and the minimum size shall be pieces not more than 5 percent of which will pass through a round opening  $\frac{5}{64}$  inch in diameter. This minimum standard may be modified by the Secretary on the basis of a Board recommendation or other information.

(c) *Effective period.* The minimum standards established pursuant to paragraphs (a) and (b) of this section and the provisions of this part relating to the administration thereof, shall continue in effect irrespective of whether the season average price for walnuts is

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above the parity level specified in section 2(1) of the Act.

(d) *Additional grade, size or other quality regulation.* The Board may recommend to the Secretary additional grade, size or other quality regulations, and may also recommend different regulations for different market destinations. If the Secretary finds on the basis of such recommendation or other information that such additional regulations would tend to effectuate the declared policy of the Act, he or she shall establish such regulations.

(e) *Minimum requirements for reserve.* The Board, with the approval of the Secretary, may specify the minimum kernel content and related requirements for any lot of walnuts acceptable for disposition for credit against a reserve obligation: *Provided*, That reserve walnuts exported must meet the requirements of paragraph (a) of this section if inshell, or paragraph (b) of this section if shelled.

[27 FR 9094, Sept. 13, 1962, as amended at 39 FR 35330, Oct. 1, 1974; 41 FR 31543, July 29, 1976; 73 FR 11339, Mar. 3, 2008]

## § 984.51 Inspection and certification of inshell and shelled walnuts.

(a) Before or upon handling of any walnuts for use as free or reserve walnuts, each handler at his or her own expense shall cause such walnuts to be inspected to determine whether they meet the then applicable grade and size regulations. Such inspection shall be performed by the inspection service or services designated by the Board with the approval of the Secretary; *Provided*, That if more than one inspection service is designated, the functions performed by each service shall be separate, and shall not duplicate each other. Handlers shall obtain a certificate for each inspection and cause a copy of each certificate issued by the inspection service to be furnished to the Board. Each certificate shall show the identity of the handler, quantity of walnuts, the date of inspection, and for inshell walnuts the grade and size of such walnuts as set forth in the United States Standards for Walnuts (*Juglans regia*) in the Shell. Certificates covering reserve shelled walnuts for export shall also show the grade, size, and color of such walnuts as set forth in

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the United States Standards for Shelled Walnuts (*Juglans regia*). The Board, with the approval of the Secretary, may prescribe procedures for the administration of this provision.

(b) Inshell merchantable walnuts certified shall be converted to the kernelweight equivalent at 45 percent of their inshell weight. This conversion percentage may be changed by the Board with the approval of the Secretary.

(c) Upon inspection, all walnuts for use as free or reserve walnuts shall be identified by tags, stamps, or other means of identification prescribed by the Board and affixed to the container by the handler under the supervision of the Board or of a designated inspector and such identification shall not be altered or removed except as directed by the Board. The assessment requirements in §984.69 shall be incurred at the time of certification.

(d) Whenever the Board determines that the length of time in storage or conditions of storage of any lot of merchantable walnuts which has been previously inspected have been or are such as normally to cause deterioration, such lot of walnuts shall be reinspected at the handler's expense and recertified as merchantable prior to shipment.

[39 FR 35330, Oct. 1, 1974, as amended at 41 FR 31543, July 29, 1976; 73 FR 11339, Mar. 3, 2008]

### § 984.52 Processing of shelled walnuts.

(a) No handler shall slice, chop, grind, or in any manner change the form of shelled walnuts unless such walnuts have been certified as merchantable or unless such walnuts meet quality regulations established under §984.50(d) if such regulations are in effect.

(b) Any lot of shelled walnuts which, upon inspection, fails to meet the minimum standard effective pursuant to §984.50 solely due to excess shriveling may be certified for processing provided that the total amount of shrivel does not exceed 20 percent, by weight, of the lot. All such walnuts must be reinspected after processing and shall be certified as merchantable if the processed material meets the effective minimum standard. The provisions of this paragraph may be modified by the Sec-

retary, upon recommendation of the Board or other information.

(c) The Board shall establish such procedures as are necessary to insure that all such walnuts are inspected prior to being placed into the current of commerce.

[39 FR 35330, Oct. 1, 1974, as amended at 73 FR 11339, Mar. 3, 2008]

### RESERVE WALNUTS

### § 984.54 Establishment of obligation.

(a) *Reserve obligation.* Whenever free and reserve percentages are in effect for a marketing year, each handler shall withhold a kernelweight of certified merchantable walnuts equal to a quantity derived by the application of the reserve percentage to the kernelweight of merchantable walnuts certified. The kernelweight of certified merchantable walnuts which handlers are required to withhold shall be the "reserve obligation." The walnuts handled for use as free walnuts by any handler in accordance with the provisions of this part shall be deemed to be that handler's quota fixed by the Secretary within the meaning of section 8(a)(5) of the act.

(b) *Holding requirements.* Each handler shall at all times hold in his possession or under his control in proper storage the kernelweight of certified merchantable walnuts necessary to meet his reserve obligation less: (1) Any quantity which was disposed of by him pursuant to §984.56; and (2) any quantity for which he is otherwise relieved by the Board of responsibility to so hold walnuts.

[41 FR 31543, July 29, 1976]

### § 984.56 Disposition of reserve walnuts.

(a) *General.* The Board shall have power and authority to sell or dispose of any and all reserve walnuts withheld upon the best terms and at the highest returns obtainable consistent with the ultimate complete disposition of reserve, subject to all conditions of this section. The Board may dispose of reserve walnuts through handlers acting as agents of the Board under the terms and conditions specified by the Board.

(b) *Export.* The Board may export or authorize the disposition in export to

the destinations outside the United States, Puerto Rico, and the Canal Zone, the quantity of reserve walnuts permitted to be exported by the export percentage establishment pursuant to § 984.49. Reserve walnuts may be exported by any handler as an agent of the Board under the terms and conditions specified by the Board.

(c) *Pooling.* At any time during the marketing year a handler may deliver reserve walnuts and any substandard walnuts meeting the minimum kernel content requirements effective pursuant to § 984.50(e) to the Board for pooling and crediting against his reserve obligation. Any reserve walnuts that the handler as agent of the Board has not disposed of by the end of the marketing year shall thereafter be delivered to the Board for pooling on demand. The Board shall dispose of these walnuts for use in the following outlets: Government agencies, charitable institutions, poultry or animal feed, walnut oil or other markets non-competitive with markets for merchantable free walnuts. The Board may rent and operate or arrange the use of facilities for storage and disposition of reserve walnuts delivered to it.

(d) *Crediting.* The kernelweight of walnuts disposed of in accordance with this section shall be credited to the handler's reserve obligation. At any time during the marketing year, upon a handler's written request, the Board shall transfer part or all of the handler's credit in excess of his reserve obligation to any handler he designates.

(e) *Pool proceeds.* The proceeds remaining after the payment of all expenses incurred by the Board in receiving, holding, and disposing of pooled walnuts shall be distributed pro rata by the Board to each handler in proportion to his contribution thereto, measured in kernelweight, or such other basis as the Board may adopt with the approval of the Secretary.

(f) *Rules and regulations.* The Board, with the approval of the Secretary, may prescribe such rules and regulations as are necessary to carry out the provisions of this section.

[41 FR 31544, July 29, 1976]

**§ 984.59 Interhandler transfers.**

For the purposes of this part, transfer means the sale of inshell and shelled walnuts within the area of production by one handler to another. The Board, with the approval of the Secretary, may establish methods and procedures, including necessary reports, for such transfers.

[73 FR 11339, Mar. 3, 2008]

**§ 984.64 Disposition of substandard walnuts.**

Substandard walnuts may be disposed of only for manufacture into oil, livestock feed, or such other uses as the Board determines to be non-competitive with existing domestic and export markets for merchantable walnuts and with proper safeguards to prevent such walnuts from thereafter entering channels of trade in such markets. Wherever free and reserve percentages are in effect, the kernelweight of any walnuts meeting the minimum kernel content requirements effective pursuant to § 984.50(e), may be pooled and the disposition credited to the handler's reserve obligation pursuant to § 984.56. Each handler shall submit, in such form and at such intervals as the Board may determine, reports of (a) his production and holdings of substandard walnuts and (b) the disposition of all substandard walnuts to any other person, showing the quantity, lot, date, name and address of the person to whom delivered, the approved use and such other information pertaining thereto as the Board may specify.

[41 FR 31544, July 29, 1976]

**§ 984.65 Compliance.**

Except as provided in this subpart, no person shall handle walnuts, inshell or shelled, during any marketing year in which this subpart and any regulations issued by the Secretary hereunder are in effect, unless such person has previously met the obligations imposed by each such regulation and the provisions of this subpart.

**§ 984.66 Assistance of the Board in meeting reserve obligation.**

The Board may assist any handler in accounting for his reserve obligation

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and may aid any handler in acquiring walnuts to meet any deficiency in his reserve obligation, or in accounting for, or disposing of reserve walnuts.

[41 FR 31544, July 29, 1976]

### § 984.67 Exemptions.

(a) *Exemption from volume regulation.* Reserve percentages shall not apply to lots of merchantable inshell walnuts which are of jumbo size or larger as defined in the then effective United States Standards for Walnuts in the Shell, or to such quantities as the Board may, with the approval of the Secretary, prescribe.

(b) *Exemptions from assessments, quality, and volume regulations*—(1) *Sales by growers direct to consumers.* Any walnut grower may handle walnuts of his own production free of the regulatory and assessment provisions of this part if he sells such walnuts in the area of production directly to consumers under the following types of exemptions.

(i) At roadside stands and farmers' markets;

(ii) In quantities not exceeding an aggregate of 500 pounds of inshell walnuts or 200 pounds of shelled walnuts during any marketing year (at locations other than those specified in (b)(i) of this section); and

(iii) If shipped by parcel post or express in quantities not exceeding 10 pounds of inshell walnuts or 4 pounds of shelled walnuts to any one consumer in any one calendar day.

(2) *Green walnuts.* Walnuts which are green and which are so immature that they cannot be used for drying and sale as dried walnuts may be handled without regard to the provisions of this part.

(3) *Noncompetitive outlets.* Any person may handle walnuts, free of the provisions of this part, for use by charitable institutions, relief agencies, governmental agencies for school lunch programs, and diversion to animal feed or oil manufacture pursuant to an authorized governmental diversion program.

(c) *Rules and modifications.* The Board may establish, with the approval of the Secretary, such rules, regulations and safeguards and such modifications as

will promote the objectives of this subpart.

[27 FR 9094, Sept. 13, 1962, as amended at 41 FR 31544, July 29, 1976; 73 FR 11339, Mar. 3, 2008]

### EXPENSES AND ASSESSMENTS

### § 984.68 Expenses.

The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each marketing year for the maintenance and functioning of the Board, and for such other purposes as the Secretary may, pursuant to this part, determine to be appropriate. The Board shall file a proposed budget of expenses and a rate of assessment with the Secretary as soon as practicable after the beginning of each marketing year.

[41 FR 31544, July 29, 1976]

### § 984.69 Assessments.

(a) *Requirement for payment.* Each handler shall pay the Board, on demand, his pro rata share of the expenses authorized by the Secretary for each marketing year. Each handler's pro rata share shall be the rate of assessment per kernelweight pound of walnuts fixed by the Secretary times the kernelweight of merchantable walnuts he has certified. At any time during or after the marketing year the Secretary may increase the assessment rate as necessary to cover authorized expenses and each handler's pro rata share shall be adjusted accordingly.

(b) *Reserve walnut pool expenses.* The Board is authorized temporary use of funds derived from assessments collected pursuant to paragraph (a) of this section to defray expenses incurred in disposing of reserve walnuts pooled. All such expenses shall be deducted from the proceeds obtained by the Board from the sale or other disposal of pooled reserve walnuts.

(c) *Accounting.* If at the end of a marketing year the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (c)(2)

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or (c)(3) of this section, it shall be refunded to handlers from whom collected and each handler's share of such excess funds shall be the amount of assessments he or she has paid in excess of his or her pro rata share of the actual expenses of the Board.

(2) Excess funds may be used temporarily by the Board to defray expenses of the subsequent marketing year: Provided, That each handler's share of such excess shall be made available to him or her by the Board within five months after the end of the year.

(3) The Board may carry over such excess into subsequent marketing years as a reserve: Provided, That funds already in reserve do not exceed approximately two years' budgeted expenses. In the event that funds exceed two marketing years' budgeted expenses, future assessments will be reduced to bring the reserves to an amount that is less than or equal to two marketing years' budgeted expenses. Such reserve funds may be used:

(i) To defray expenses, during any marketing year, prior to the time assessment income is sufficient to cover such expenses;

(ii) To cover deficits incurred during any year when assessment income is less than expenses;

(iii) To defray expenses incurred during any period when any or all provisions of this part are suspended;

(iv) To meet any other such costs recommended by the Board and approved by the Secretary.

(d) *Termination.* Any money collected from assessments hereunder and remaining unexpended in the possession of the Board upon termination of this part shall be distributed in such manner as the Secretary may direct.

[27 FR 9094, Sept. 13, 1962, as amended at 41 FR 31544, July 29, 1976; 73 FR 11339, Mar. 3, 2008]

## § 984.70 Contributions.

The Board may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 984.46, Research and development. Furthermore, such contributions shall be free from any encumbrances by the

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donor and the Board shall retain complete control of their use.

[73 FR 11340, Mar. 3, 2008]

### REPORTS, BOOKS, AND OTHER RECORDS

#### § 984.71 Reports of handler inventory.

Each handler shall submit to the Board in such form and on such dates as the Board may prescribe, reports showing his or her inventory of inshell and shelled walnuts.

[73 FR 11340, Mar. 3, 2008]

#### § 984.72 Reports of merchantable walnuts handled.

Each handler who handles merchantable walnuts, inshell or shelled, at any time during a marketing year shall submit to the Board in such form and at such intervals as the Board may prescribe, reports showing the quantity so handled and such other information pertinent thereto as the Board may specify.

#### § 984.73 Reports of walnut receipts.

Each handler shall file such reports of his or her walnut receipts from growers, handlers, or others in such form and at such times as may be requested by the Board with the approval of the Secretary.

[73 FR 11340, Mar. 3, 2008]

#### § 984.76 Other reports.

Upon request of the Board made with the approval of the Secretary each handler shall furnish such other reports and information as are needed to enable the Board to perform its duties and exercise its powers under this subpart.

#### § 984.77 Verification of reports.

For the purpose of verifying and checking reports filed by handlers or the operations of handlers, the Secretary and the Board through its duly authorized representatives shall have access to any premises where walnuts and walnut records are held. Such access shall be available at any time during reasonable business hours. Authorized representatives shall be permitted to inspect any walnuts held and any and all records of the handler with respect to matters within the purview of

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this part. Each handler shall maintain complete records on the receiving, holding, and disposition of both inshell and shelled walnuts. Each handler shall furnish all labor necessary to facilitate such inspections at no expense to the Board or the Secretary. Each handler shall store all walnuts held by him in such manner as to facilitate inspection and shall maintain adequate storage records which will permit accurate identification with respect to inspection certificates of respective lots and of all such walnuts held or disposed of theretofore. The Board, with the approval of the Secretary, may establish any methods and procedures needed to verify reports.

[41 FR 31544, July 29, 1976]

### **§ 984.78 Certification of reports.**

All reports submitted to the Board as required in this part shall be certified to the Secretary and the Board as to the completeness and correctness of the information contained therein.

### **§ 984.79 Confidential information.**

All reports and records submitted by handlers to the Board, which include data or information constituting a trade secret or disclosing the trade position, or financial condition or business operations of the handler shall be kept in custody of one or more employees of the Board and shall be disclosed to no person except the Secretary.

### **§ 984.80 Books and other records.**

Each handler shall maintain such records of walnuts received, held and disposed of by him as may be prescribed by the Board for the purpose of performing its functions under this subpart. Such books and records shall be retained and be available for examination by authorized representatives of the Board and the Secretary for a period of two years after the end of the marketing year in which the recorded transactions are completed.

## **MISCELLANEOUS PROVISIONS**

### **§ 984.83 Rights of the Secretary.**

The members and alternates of the Board and any agent or employee appointed or employed by the Board, shall be subject to removal or suspen-

sion by the Secretary, at his discretion, at any time. Each and every decision, determination, or other act of the Board shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void.

### **§ 984.84 Personal liability.**

No member or alternate of the Board, nor any employee or agent thereof shall be held personally responsible either individually or jointly with others, in any way whatsoever, to any handler or any person for errors in judgment, mistakes, or other acts either of commission or omission, as such member, alternate employee or agent, except for acts of dishonesty.

[39 FR 35332, Oct. 1, 1974, as amended at 41 FR 31545, July 29, 1976]

### **§ 984.85 Separability.**

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder hereof or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

### **§ 984.86 Derogation.**

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or in accordance with such powers, to act in the premises whenever such action is deemed advisable.

### **§ 984.87 Duration of immunities.**

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination hereof except with respect to acts done under and during the existence hereof.

### **§ 984.88 Agents.**

The Secretary may, by a designation in writing, name any person, including any officer or employee of the Government, or name any subdivision of the

United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

**§ 984.89 Effective time and termination.**

(a) *Effective time.* The provisions of this subpart shall become effective at such time as the Secretary may declare above his signature attached to this subpart, and shall continue in force until terminated in one of the ways hereinafter specified.

(b) *Termination.* (1) The Secretary may, at any time, terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(2) The Secretary may terminate or suspend the operation of any or all of the provisions of this subpart, whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(3) The Secretary shall terminate the provisions of this subpart at the end of any marketing year whenever he finds that such termination is favored by a majority of the producers of walnuts who during the preceding marketing year have been engaged in the production for market of walnuts in the State of California: *Provided*, That such majority have during such period produced for market more than 50 percent of the volume of such walnuts produced for market within said States, but such termination shall be effected only if announced on or before July 1 of the then current marketing year.

(4) Within six years of the effective date of this amendment the Secretary shall conduct a referendum to ascertain whether continuance of this part is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six years thereafter. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by a two-thirds ( $\frac{2}{3}$ ) majority of voting producers, or a two-thirds ( $\frac{2}{3}$ ) majority of volume represented thereby, who, during a representative period determined by the Secretary, have been engaged in

the production for market of walnuts in the production area. Such termination shall be announced on or before the end of the production year.

(5) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

(c) *Proceedings after termination.* (1) Upon the termination of the provisions of this subpart, the members of the Board then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the Board, of all funds and property then in the possession or under the control of the Board, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(2) Said trustees shall continue in such capacity until discharged by the Secretary; shall from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the joint trustees to such person as the Secretary may direct; and shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the joint trustees pursuant hereto.

(3) Any person to whom funds, property or claims have been transferred or delivered by the Board or its members, pursuant to this section, shall be subject to the same obligation imposed upon the members of the said Board and upon said joint trustees.

[27 FR 9094, Sept. 13, 1962, as amended at 41 FR 31545, July 29, 1976; 73 FR 11340, Mar. 3, 2008]

**§ 984.90 Effect of termination or amendment.**

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any

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provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person, with respect to any such violation.

EDITORIAL NOTE: After January 1, 1979, “Budget of Expenses and Rate of Assessment” regulations (e.g., sections .300 through .399) and “Marketing percentage” regulations (e.g., sections .200 through .299) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### § 984.91 Relationship with the California Walnut Commission.

In conducting Board activities and other objectives under this part, the Board may deliberate, consult, cooperate and exchange information with the California Walnut Commission, whose activities compliment those of the Board. Any sharing of information gathered under this subpart shall be kept confidential in accordance with provisions under section 10(i) of the Act.

[73 FR 11340, Mar. 3, 2008]

### Subpart—Assessment Rates

#### § 984.347 Assessment rate.

On and after September 1, 2008, an assessment rate of \$0.0131 per kernelweight pound is established for California merchantable walnuts.

[73 FR 73764, Dec. 4, 2008]

### Subpart—Administrative Rules and Regulations

#### § 984.437 Methods for proposing names of additional candidates to be included on walnut growers’ nomination ballots.

(a) With regard to Board grower member positions specified in § 984.35(a)(5) and (6), any ten or more such growers who marketed an aggregate of 500 or more tons of walnuts through handlers who did not handle 35% or more of the crop during the

marketing year preceding the year in which Board nominations are held, may petition the Board to include on the nomination ballot the name of an eligible candidate for this position, and the name of an eligible candidate to serve as his or her alternate. The names of the eligible candidates proposed pursuant to this paragraph shall be included on the ballot together with the names of any incumbents who are willing to continue serving on the Board.

(b) Any ten or more growers eligible to serve in the grower member positions specified in § 984.35(a)(3) and (4) and § 984.35(b)(4) and (5) and who marketed an aggregate of 500 or more tons of walnuts through handlers who did not handle 35% or more of the crop during the marketing year preceding the year in which Board nominations are held, may petition the Board to include on the nomination ballot for a district the name of an eligible candidate for the applicable position, and the name of an eligible candidate to serve as his or her alternate. The names of the eligible candidates proposed pursuant to this paragraph shall be included on the ballot together with the names of any incumbents who are willing to continue serving on the Board.

(c) Petitions made pursuant to paragraphs (a) and (b) of this section shall be on forms supplied by the Board and filed no later than April 1 of the nomination year.

[41 FR 54476, Dec. 14, 1976, as amended at 73 FR 73997, Dec. 5, 2008]

#### § 984.445 Procedures for voting by mail or telegram.

Whenever the Board votes upon any proposition by mail or telegram at least six members or alternates acting as members must vote and one dissenting vote shall prevent its adoption. Each proposition to be voted upon by either of these methods shall specify a time limit for members to vote, after which the alternates shall be given the opportunity to vote.

[40 FR 22267, May 22, 1975]



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### § 984.450 Grade and size regulations.

(a) *Minimum kernel content requirements for inshell walnuts for reserve disposition credit.* For the purposes of §§ 984.54 and 984.56, no lot of inshell walnuts may be held, exported, or disposed of for use by government agencies or charitable institutions unless it meets the minimum requirements for merchantable inshell walnuts effective pursuant to § 984.59(a). The disposition of any lot of inshell walnuts pursuant to § 984.64 having at least a certified kernelweight of not less than 10 percent of the inshell weight of the lot may be credited against a handler's reserve obligation.

(b) *Minimum kernel content requirements for shelled walnuts for reserve disposition credit.* For the purposes of §§ 984.54 and 984.56, no lot of shelled walnuts may be held, exported, or disposed of for use by government agencies or charitable institutions unless it meets the minimum requirements for merchantable shelled walnuts effective pursuant to § 984.50(b). The disposition of any lot of shelled walnuts pursuant to § 984.64 having at least a certified kernelweight of kernels six sixty-fourths of an inch or larger of not less than 10 percent of the total weight of the lot may be credited against a handler's reserve obligation: *Provided*, That such minimum kernel content requirements shall not apply to any lot of walnut meal certified by the designated inspection service as having been derived from chopping, slicing, or dicing merchantable shelled walnuts.

[41 FR 54476, Dec. 14, 1976]

### § 984.451 Inspection and certification of inshell and shelled walnuts.

(a) The inspection service shall be the DFA of California.

(b) Each handler shall make each container of each lot of walnuts accessible for sampling and sealing or stamping in connection with the inspection and certification of any lot of inshell or shelled walnuts.

(c) Inshell and shelled walnuts for export pursuant to § 984.56(b) shall have been inspected and certified not more than 60 days prior to shipment from the handler's plant.

[41 FR 54476, Dec. 14, 1976]

### § 984.452 Certification of shelled walnuts for processing.

Each certificate issued for shelled walnuts for processing pursuant to § 984.52(b) shall bear the notation "Certified for Processing Only." Shelled walnuts so certified for processing may not be processed by anyone other than the handler obtaining such certificate.

[28 FR 1863, Feb. 28, 1963]

### § 984.456 Disposition of reserve walnuts and walnuts used for reserve disposition credit.

(a) Beginning August 1 of any marketing year, a handler may become an agent of the Board to dispose of reserve walnuts of such marketing year. The agency shall be established upon execution of an "Agency Agreement for Reserve Walnuts" setting forth the terms and conditions specified by the Board for the sale of reserve walnuts in authorized outlets.

(b) Any handler who desires to transfer disposition credit in excess of his reserve obligation to another handler shall submit a request to the Board for such transfer on WMB Form No. 17 signed by both handlers and the Board shall credit such transfer.

(c) Any reserve walnuts that a handler has not disposed of by the end of the marketing year shall be delivered to the Board for pooling on demand. The Board may delay such demand with respect to reserve walnuts for which the handler has agreed to undertake disposition pursuant to the Board's authority. Each lot of reserve or substandard walnuts delivered to the Board for pooling and disposition shall be separately weighed at the handler's expense by a public weighmaster either upon removal from the handler's premises or in transit to Board storage facilities or diversion point. A copy of each weighmaster's certificate showing the net weight of the walnuts shall be forwarded to the Board by the handler. Walnuts delivered to the Board shall be delivered F.O.B. handler's warehouse or point of storage.

[41 FR 54476, Dec. 14, 1976]

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**§ 984.459 Reports of interhandler transfers.**

(a) Any handler who transfers walnuts to another handler within the State of California shall submit to the Board, not later than 10 calendar days following such transfer, a report showing the following:

- (1) The date of transfer;
- (2) The net weight, in pounds, of the walnuts transferred;
- (3) Whether such walnuts were certified by the inspection service;
- (4) Whether such walnuts were inshell or shelled;
- (5) The name and address of the transferring handler; and
- (6) The name and address of the receiving handler.

(b) The transferring handler shall send two copies of the report to the receiving handler at the time the report is submitted to the Board. The receiving handler shall certify, on one copy of the report, to the receipt of such walnuts and submit it to the Board within 10 calendar days after the walnuts, or copies of such report, have been received, whichever is later.

[65 FR 39286, June 26, 2000]

**§ 984.464 Disposition of substandard walnuts.**

(a) Whenever free and reserve percentages are in effect during a marketing year substandard walnuts meeting the requirements of § 984.450 may be delivered by a handler to the Board for pooling at any time during the year and the disposition credited to the handler's reserve obligation.

(b) The Board shall maintain a list of approved crushers, livestock feed manufacturers and livestock feeders, and of the locations of the facilities within the area of production to which substandard walnuts may be shipped. The Board may deny approval to any applicant or remove any approved crusher, feed manufacturer, or feeder from the list when such denial or removal is deemed necessary to insure control of substandard walnut disposition or the Board determines that substandard walnuts are not shipped to such facilities. Substandard walnuts disposed of to an approved crusher, livestock feed manufacturer, or livestock feeder, may

only be shipped directly to an approved location where the crushing, feed manufacture, or feeding is to take place. Applications for approval to crush, manufacture livestock feed, or feed substandard walnuts shall be submitted to the Board on a form prescribed by the Board and which includes the location and a description of the disposal facilities to be used and a certification to the Board and the Secretary of Agriculture that the applicant will:

- (1) Crush, manufacture feed, or feed such walnuts at the location;
- (2) Use such walnuts for no other purpose than for crushing into oil, manufacturing into livestock feed, or livestock feeding;

(3) Permit such inspection of his premises and of walnuts received and held by him, and such examination of his books and records covering walnut transactions as the Board may require;

(4) Keep a record of his receipts, holdings, and use of substandard walnuts available for examination by authorized representatives of the Board and the U.S. Department of Agriculture for a period of two years after the end of the marketing year in which the recorded transactions are completed; and

(5) Make such reports, certified to the Board and the Secretary as to their correctness, as the Board may require.

(c) Each handler who disposes of substandard walnuts to an approved crusher, livestock feed manufacturer or livestock feeder shall upon shipment report to the Board on WMB Form No. 20, the quantities disposed of or shipped.

[41 FR 54476, Dec. 14, 1976]

**REPORTS**

**§ 984.471 Reports of handler carryover.**

Reports of handler carryover as of August 1, January 1, and April 1 of each marketing year shall be submitted to the Board on WMB Form No. 4 for inshell walnuts and on WMB Form No. 5 for shelled walnuts, on or before August 15, January 15, and April 15 respectively, of that marketing year.

[40 FR 22267, May 22, 1975]

**§ 984.472**

**7 CFR Ch. IX (1–1–09 Edition)**

**§ 984.472 Reports of merchantable walnuts shipped.**

(a) Reports of merchantable walnuts shipped during a month shall be submitted to the Board on WMB Form No. 6 not later than the 5th day of the following month. Such reports shall include all shipments during the preceding month and shall show for inshell and shelled walnuts (1) the quantity shipped, (2) whether they were shipped into domestic or export channels, and (3) for exports, the quantity by country of destination. If a handler makes no shipments during any month he shall submit a report marked "None". If a handler has completed his shipments for the season he shall mark the report "Completed", and he shall not be required to submit any additional WMB Form No. 6 reports during the remainder of that marketing year.

(b) Reports of walnuts purchased directly from growers by handlers who are manufacturers or retailers shall be submitted to the Board on WMB Form No. 6, not later than the 5th day of the month following the month in which the walnuts were purchased. Such reports shall show the quantity of walnuts purchased and the quantity inspected and certified as merchantable walnuts.

[41 FR 54476, Dec. 14, 1976]

**§ 984.473 Report of walnut receipts.**

Each handler shall file a report of his walnut receipts from growers on or before January 15 of each marketing year on forms supplied by the Board.

[40 FR 22267, May 22, 1975]

**§ 984.476 Report of walnut receipts from outside of the United States.**

Each handler who receives walnuts from outside of the United States shall file with the Board, on WMB Form No. 7, a report of the receipt of such walnuts. The report shall be filed beginning with the February 5, 2000, report as follows: On or before November 5 for such walnuts received during the period August 1 to October 31; on or before February 5 for such walnuts received during the period November 1 to January 31; on or before May 5 for such walnuts received during the period

February 1 to April 30; and on or before August 5 for such walnuts received during the period May 1 to July 31. The report shall include the quantity of such walnuts received, the country of origin for such walnuts, and whether such walnuts are inshell or shelled. With each report, the handler shall submit a copy of a product tag issued by a DFA of California inspector for each receipt of such walnuts that includes the name of the person from whom such walnuts were received, the date such walnuts were received by the handler, the number of containers and the U.S. Custom's Service entry number, whether such walnuts are inshell or shelled, the quantity of such walnuts received, the country of origin for such walnuts, the name of the DFA of California inspector who issued the product tag, and the date such tag was issued.

[64 FR 58327, Oct. 29, 1999]

**§ 984.480 Books and other records.**

Each handler shall maintain true and complete records of all inshell and shelled walnuts and walnut material, by categories, received, held, or disposed of by him. The records shall be maintained in such form as to permit verification of all transactions involved and shall be made available during normal business hours to authorized representatives of the Board or the Secretary of Agriculture. These records shall include the following:

(a) The names and addresses of the persons from whom received, and the quantities received from each such person;

(b) The names and addresses of the persons to whom disposal is made, and the quantities disposed of to each such person;

(c) The quantities used by the handler for such purposes as manufacturing, production of oil, and livestock feeding; and

(d) The quantities held on August 1, January 1, and April 1 of each marketing year.

[40 FR 22268, May 22, 1975]